THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 642/2019

In the matter between:

K2012076290 SA (PTY) LTD **APPELLANT**

and

OUDE CHARDONNAY RUSOORD (PTY) LTD (IN LIQUIDATION) **FIRST RESPONDENT**

REGISTRAR OF DEEDS, CAPE TOWN **SECOND RESPONDENT**

Neutral citation: *K2012076290 (Pty) Ltd v Oude Chardonnay Rusoord (Pty) Ltd and Another* (Case no 642/2019) [2020] ZASCA 164 (10 December 2020)

Coram: NAVSA, ZONDI and MOCUMIE JJA and EKSTEEN and MABINDLA-BOQWANA AJJA

Heard: 19 November 2020

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. It has been published on the

Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 10 December2020.

Summary: Mortgage bond – whether property to be mortgaged identifiable- court raising issues not raised by either party - issues identified by court and on which case decided without any merit - agreement for property to be mortgaged established- property clearly identifiable- defence of fraudulent misrepresentation unfounded.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Vos AJ) sitting as court of first instance:

1 The appeal succeeds with costs, including the costs of two counsel.

2 The order of the court a quo is set aside and is replaced by the following order:

'(a) It is declared that as at 5 December 2015 the appellant is entitled to the relief sought in paras 2.1, 2.3 and 3 of the notice of motion.

(b) The first respondent is ordered to pay the applicant's costs.'

JUDGMENT

Zondi JA: (Navsa and Mocumie JJA and Eksteen and Mabindla-Boqwana AJJA concurring)

[1] This unopposed appeal[1], with the leave of this Court, is against an order and judgment of the Western Cape Division of the High Court, Cape Town (high court) (Vos AJ), discharging a rule nisi granted by Saldanha J on 24 July 2018 and dismissing the appellant's claim with costs. The rule nisi called upon Oude Chardonnay Rusoord (Pty) Ltd (OCR), prior to its voluntary liquidation, to show cause why, inter alia, it should not be compelled to do all things reasonably required to cause a first continuing mortgage bond for an amount of R2.4 million to be registered over Erf 39937 Paarl, in favour of the appellant, as security for the due and proper fulfilment of its present and future obligations towards the appellant. The appellants had also sought an order interdicting the second respondent, the Registrar of Deeds, from passing or effecting registration of transfer of Erf 4788 Paarl, or any property forming part of or resulting from any subdivision thereof into the names of any other persons or entities, pending the return day, and in the event that the rule be made final, until the contemplated mortgage bond was registered.

[1] The liquidators filed a notice to abide.

[2] Vos AJ discharged the rule nisi on the ground that the mortgage bond was incapable of registration as the property, over which the first mortgage bond was sought to be registered, was not sufficiently described in the relevant deed of sale and that the parties were not in agreement concerning the identity of the property sought to be mortgaged. Furthermore, the court a quo had regard to regulation 28 (2) of the Registration of Deeds Regulations, which provides that there shall be no reference in a deed conferring title to land or an interest therein, or in a mortgage bond to any building or other property movable or immovable, which may be on or attached to the land. The court a quo held that in the present case there was such a reference and that a bond could thus not be registered.

[3] The facts giving rise to this appeal are briefly the following. During or about 2012 the appellant, a property developer, purchased Erf 4788, Paarl (the property) from the liquidator of Aslo Holdings (Pty) Ltd (in liquidation) which, prior to its liquidation, had partially developed the property in terms of the approved plans (original plans). The original plans entailed the proposed development consisting of the restoration of the original house and construction of a further 42 flats. The appellant intended to complete the proposed development that Aslo had commenced with, prior to its liquidation.

[4] The appellant had, upon enquiry, been advised verbally by the local authority that a developer's contribution or Bulk Infrastructure Contribution Levies were not payable in respect of the development initially proposed.

[5] On 20 October 2016 the appellant sold the property to OCR for R6 million excluding VAT. The sale agreement was subject to the following suspensive conditions:

'CONDITION PRECEDENT

2.1 This Agreement is subject to the fulfilment of the following Condition Precedent that by no later than **17h00 on 31 July 2017,** the proposed Development has been approved by the Local Authority.

2.2 The Parties shall use their reasonable endeavours and will co-operate in good faith to procure the fulfilment of the Condition Precedent as soon as reasonably possible after the Signature Date.

2.3 The Purchaser will be responsible for all costs to obtain approval of the proposed Development as contemplated in clause 2.1 and the Purchaser accordingly indemnifies the Seller in respect of any such costs.
2.4 The Condition Precedent in clause 2.1 has been inserted for the benefit of the Purchaser, who will be entitled to waive fulfilment of such Condition Precedent prior to the expiry of the time period set out in that clause.
2.5 In the event of the Condition Precedent not being fulfilled or (where applicable) waived by the date referred to in clause 2.1, or by such extended date as may be agreed in writing between the Parties, this Agreement shall be deemed to be *void ab initio* and the Parties shall be restored to the *status quo ante*.'

[6] In terms of clause 3.3.2 of the agreement the purchase price had to be paid in the following manner:
'3.3.2.1 The Purchaser shall pay to the Seller the Purchase Price plus VAT against Transfer, subject to the simultaneous cancellation of all existing mortgage bonds registered against the Property.
3.3.2.2 The Purchaser shall furnish the Conveyancers with an irrevocable, unconditional bank guarantee or bank guarantees, acceptable to the Seller, for the due payment of the Purchase Price within 14 (fourteen) days after being requested to do so which request will only be made after fulfilment or waiver, as the case may be, of the condition precedent contemplated in clause 2.1.'

[7] The property was defined to mean:
'1.1.10.1 Section No.1 as shown and more fully described on Sectional Plan No. SS 41/2015 on the scheme known as THE VINES in respect of the land and building or buildings situate at PAARL, IN THE DRAKENSTEIN MUNICIPALITY, of which section the floor area, according to the said sectional plan is 69 (Sixty Nine) square metres in extent;

Together with an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan;
1.1.10.2 Section No. 2 as shown and more fully described on Sectional Plan No. SS 41/2015 in the scheme known as THE VINES in respect of the land and building or buildings situate at PAARL, IN THE DRAKENSTEIN MUNICIPALITY, of which section the floor area, according to the said sectional plan is 69 (Sixty Nine) square metres in extent;
together with an undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan;

previously known as Erf 4788, Paarl, more fully depicted on sheet 1 – 4 of SG Diagram no 348/2013, attached hereto.'

[8] On 4 November 2016 OCR submitted a Site Development Plan to the local authority for approval. It differed substantially from the original plans and now proposed the subdivision of Erf 4788 into nine erven, in addition to the existing dwelling. On 28 July 2017 the local authority approved the development subject to various conditions laid down by its Civil Engineering Services department. The relevant part of the communication received by OCR when it was informed of the approval of its development on 28 July 2017 reads as follows:

'Based on the information provided in the application the Development Contribution payable by the developer is R 1 012 060,00 (Vat incl) as per attached calculation. The value is only valid until 30th June 2017 whereafter a new calculation is required.'

[9] As a result of this communication and with knowledge of the development contribution, which would have to be paid it requested that the parties sign an addendum, which in the words of OCR 'would provide [OCR] with a month's leeway to ensure compliance with the letter and to obtain the requisite information regarding the payment of the BICLs and/or the DCs.' As a result, on 31 July 2017 the parties amended the agreement by way of an addendum (the first addendum).

[10] The terms of the first addendum were the following:

'**2 AMENDMENTS**

With the effect of 28 July 2017 the aforementioned Sale of Property Agreement is amended as follows:

2.1 that clause 1.1.10 is amended by deleting the words "*Property means*" and to replace it with "*Property' means Erf 4788 Paarl measuring approximately 2312 square meters, which as at the Date of Signature fall within the sectional title register known as "The Vines"'.*

2.2 the date referred to in clause 2.1 is amended to **17h00 on 31 August 2017.'**

[11] In the first addendum the parties replaced clause 3.3.2 of the original agreement with the following:

'3.3.2 ***Payment of the Purchase Price***

3.3.2.1 The Purchaser shall pay to the Seller the Purchase Price plus VAT, subject to the simultaneous cancellation of all existing mortgage bonds registered against the Property, as follows:

3.3.2.1.1 against Transfer the amount of R4 840 000,00 (which includes the provision for VAT calculated on the Purchase Price);

3.3.2.1.2 on or before 30 April 2018, the balance of the Purchase Price in the amount of R2 000 000,00.

3.3.2.2 The Purchaser shall furnish the Conveyancers with an undertaking from the Purchaser's attorneys, De Klerk & Van Gend Inc, acceptable to the Seller or the Conveyancers, for the due payment of the amount referred to in clause 3.3.2.1.1 within 14 (fourteen) days after being requested to do so which request will only be made after fulfilment or waiver, as the case may be, or the condition precedent contemplated in clause 2.1.

3.3.2.3 The Purchaser shall furnish the Conveyancers with an undertaking from De Klerk & Van Gend Inc, acceptable to the Seller or the Conveyancers, for the due payment of the amount referred to in clause 3.3.2.1.2 by no later than the Date of Transfer."

2.4 that clause 4.1 be deleted in its entirety and replaced with the following:

"4.1 Transfer of the Property shall be given and taken as soon as possible after the fulfilment or waiver, as the case may be, of the condition precedent contemplated in clause 2.1, on condition that the Parties shall have complied with all the terms and conditions of this Agreement. The Parties agree further that Transfer shall be simultaneously with the transfer of the 8 duplex units in the Development to third party purchasers, which units have been sold. The Purchaser shall provide the Seller with documentary proof of such sales on request by the Conveyancers."

2.5 that the following provisions be added to clause 4.2:

"The Purchaser's attorneys will attend to cancellation of the existing sectional title scheme known as "The Vines" (SS41/2015) simultaneously with Transfer of the Property at the Purchaser's cost."

2.6 that the following new clause 4.6 be inserted:

"The parties agree that the Purchaser's attorneys will attend to the registration of a general plan" in respect of the Property simultaneously with Transfer of the Property at the Purchaser's cost so as to create 10 (ten) new erven.'

[12] The property was registered into the name of OCR on 30 January 2018 and OCR paid the sum of R4 840 000-00 towards the purchase price. OCR thereafter became concerned that it would not be able to pay the balance of the purchase price amounting to R2 million by 30 April 2018, in terms of the deadline imposed by the first

addendum. It requested that the agreement be further amended by extending, inter alia, the due date for payment of the balance, or the furnishing of a guarantee for the payment, from 30 April 2018 to 30 June 2018. This was achieved by way of second addendum which the parties signed on 28 January 2018.

[13] The material terms of the second addendum were, inter alia, the following:

'**2 AMENDMENTS**

With the effect from of signature of this Second Addendum by the Party doing so last in time the aforementioned Sale of Property Agreement is amended as follows:

2.1 that clause 3.3.2.1.2 be deleted in its entirety and replaced with the following new clause 3.3.2.1.2-

"3.3.2.1.2 on or before 30 June 2018, the balance of the Purchase Price in the amount of R2 000 000,00 (Two Million Rand)."

2.2 that clause 3.3.2.3 be deleted in its entirety and replaced with the following new clause 3.3.2.3─

"3.3.2.3 The Purchaser shall furnish the Conveyancers with an undertaking from De Klerk & Van Gend Inc, acceptable to the Seller or the Conveyancers, for the payment of the amount referred to in clause 3.3.2.1.2 by no later than 31 March 2018."

2.3 that the following new clause 3.3.2.4 be inserted─

"3.3.2.4 The Purchaser will be liable to pay to the Seller interest on the balance of the Purchase Price as contemplated in clause 3.3.2.1.2 at the Prime Rate per annum from 1 May 2018 to date of payment of the balance Purchase Price, both days inclusive."'

[14] In terms of clause 2.4 of the second addendum, which gave rise to these proceedings, the following new clause 3.3.2.5 was inserted into the agreement:

"*3.3.2.5 The Parties agree that, as security for the due and proper fulfilment by the Purchaser of its present and future obligations and liabilities in respect of the balance of the Purchase Price as contemplated in clause 3.3.2.1.2 and those of any other nature in terms of the aforesaid Sale of Property Agreement, the Purchaser shall as soon as possible after the Transfer Date register a first continuing covering mortgage bond for an amount equal to the said balance of the Purchase Price and an additional amount of R400 000,00 (Four Hundred Thousand Rand) to cover costs and expenses over that portion of Erf 4788 Paarl on which the old house is currently situated (the former Sections 1 and 2 The Vines) in favour of the Seller.".*

. . '

[15] At this stage OCR had not paid the local authority the development contribution of R1 012 060, which was payable upon the approval of the plans to subdivide and develop the property.

[16] Pursuant to the terms of the second addendum, OCR's attorneys, on 28 March 2018, furnished the appellant's conveyancers with an 'undertaking', the terms of which were the following:

'We herewith undertake to pay to yourselves the amount of R2 000 000,00 against registration of transfer of the sectional title Units in The Vines development.

Our undertaking is subject to the following instances in respect of which we reserve the right to withdraw or revoke this undertaking upon notice to yourselves:

1. Should the registration of the above transaction(s) be unreasonably delayed or not be proceeded with; or
2. We cease to control the funds in the transaction; or
3. We are by the operation of law prevented from doing so; or
4. Should it appear that the transaction(s) and the proceeds there from are subject to any preferent claim by the Commissioner in terms of Section 99 of the Income Tax Act No.58 of 1962 as amended.

This undertaking is neither negotiable nor transferable.'

[17] The appellant's conveyancers rejected the undertaking. In response thereto OCR's conveyancers, on 7 May 2018 wrote a further letter to the appellant's conveyancers informing the appellant that OCR had received an offer of about R1.9 million on Erf 39937, Paarl. OCR offered to pay this amount to the appellant in full and final settlement of the balance of R2 million of the purchase price, but required the appellant to pay the Bulk Infrastructure Contribution Levies.

[18] Thereafter on 17 May 2018 and out of the blue, Johan Victor Attorneys on behalf of OCR, wrote to the appellant's conveyancers informing them that the appellant was in breach of the agreement and further that OCR would not cause a mortgage bond to be registered over 'that portion of Erf 4788' or furnish any undertaking for the due payment of the balance of the purchase price whilst the appellant was in breach of the agreement. The alleged breach was said to be the appellant's misrepresentation to OCR prior to the conclusion of any of the addendums that Bulk Infrastructure Contribution Levies were not payable to the local authority or

that they had been paid because of the earlier application for approval of its development by the appellant. This formed the basis of OCR's defence of fraudulent representation and its claim for the reduction of the balance of the purchase price by the amount which it contended, constituted damages it had suffered as a result of the alleged misrepresentation.

[19] The appellant's attorneys on 30 May 2018 addressed a letter to OCR's attorneys calling upon OCR to provide them with the title deed relating to the property by Friday, 1 June 2018 so as to register a mortgage bond over the property pursuant to the sale agreement. OCR ignored the demand and the appellant accordingly launched the application in the court a quo seeking, inter alia, the orders described in para 1 above.

[20] OCR opposed the application. As I have pointed out OCR sought to justify its refusal to cause a mortgage bond to be registered over Erf 39937 Paarl by asserting that the appellant had allegedly misrepresented the fact that no Bulk Infrastructure Contribution Levies were payable to the local authority in respect of the anticipated development of Erf 4788 Paarl. OCR contended that it had suffered damages amounting to R 1 699 011.93 as a result of the alleged misrepresentation and claimed a compatible reduction of the R2 million outstanding balance of the purchase price payable by it to the appellant. The effect of OCR's defence was that on its own version, it remained indebted to the appellant for the payment of the sum of R300 988.07.

[21] The court a quo discharged the rule nisi and dismissed the application on the ground that the mortgage bond was incapable of registration as the property, over which the appellant sought to register a first mortgage bond, differs to the property described in the second addendum. It found that 'neither the deed of sale, nor the two addendums to the deed of sale, refer to Erf 39937 Paarl. The second addendum dated 28 January 2018, only refers to 'that portion of Erf 4788 Paarl on which the old house is currently situated (the former sections 1 and 2 The Vines)…' In addition, as stated earlier, the court a quo also relied on the Deeds Registration regulations.

[22] The appeal therefore raises two issues: first, whether the property over which the mortgage bond was to be registered was sufficiently described in the sale

agreement as amended; and second, whether the court a quo was entitled to find that the appellant misrepresented to OCR that no development contribution levies were payable to the local authority or had in fact been paid.

[23] The court a quo misdirected itself by deciding and dismissing the matter on the basis of points that had not been raised by any of the parties.[2] Moreover, those points, as I shall demonstrate, are entirely without merit. The inadequacy of the description of the property in the mortgage agreement was never advanced by OCR as a basis for its refusal to have a mortgage bond passed over the property. OCR's opposition to the relief sought by the appellant was based on the assertion that the appellant had allegedly misrepresented the fact that no Bulk Infrastructure Contribution Levies were payable to the local council in respect of the proposed development of Erf 4788 Paarl. It did not, however, seek to resile from the agreement but instead sought a reduction of the R2 million outstanding balance of the purchase price by an amount of R1 699 011.93 which it contended it had suffered as a result of the alleged misrepresentation.[3]

[24] Simply put, the appellant's claim in the court a quo was for an order compelling OCR to cause a mortgage bond to be registered over Erf 39937 Paarl, as agreed. The question whether the property to be mortgaged is sufficiently described depends on the interpretation of clause 3.3.2.5 of the agreement as amended by clause 2.4 of the second addendum providing for a mortgage bond and in the light of the correspondence between the parties. The recent cases of this Court make it clear that in interpreting any document 'the starting point is inevitably the language of the document but it falls to be construed in the light of its context, the apparent purpose to which it is directed and the material known to those responsible for its production.'[4] Words have to be interpreted sensibly so as to avoid unbusinesslike results.

---

[2] *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614 (SCA).
[3] R H Christie *The Law of Contract in South Africa* 7 ed (2016) at 619.
[4] *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* [2009] ZASCA 7; 2009 (4) SA 399 (SCA) paras 29-40; *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18; *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* [2013] ZASCA 176; 2014 (2) SA 494 (SCA) para 12; and *Norvatis v Maphil* [2015] ZASCA 111; 2016 (1) SA 518 (SCA) para 27.

[25] The provisions of clause 2.4 of the second addendum which amended 3.3.2.5 of the agreement are set out in para [14] of this judgment. As regards the context and purpose of the agreement the following evidence relating to the identity of the property is relevant.

[26] Prior to the amendment the agreement defined the property forming the subject matter of the sale as Section No 1 and Section No 2 as described on Sectional Plan No SS41/2015 in the scheme known as The Vines in respect of the land and building or buildings situated at Paarl, in the Drakenstein Municipality, which was previously known as Erf 4788 Paarl.

[27] The parties subsequently amended the sale agreement by way of a first addendum in terms of which the description of the property was changed to mean: 'Erf 4788 Paarl measuring approximately 2312 square meters, which as at the Date of signature fell within the sectional title register known as "The Vines".' In the agreement the development to be effected on the property was described with reference to the Surveyor-General Plan No D348/2013 approved on 23 December 2013 to mean: '8 (eight) duplex unit residential development . . .".'

[28] That OCR knew full well what the nature and extent of the property to be developed was, is apparent from the Site Development Plan it submitted to the local authority for approval on 4 November 2016. The application that was submitted was for the subdivision of Erf 4788 Paarl 'into 10 portions of plus Remainder Erf 4788 …'

[29] On 28 November 2017, the local authority approved the Building Plans for erven 39928 to 39936 and Remainder of Erf 39937. On the Site Development Plan Erf 39937 is depicted as the Remainder of Erf 4788.

[30] It is apparent from this analysis of the evidence of the context and the purpose of a mortgage agreement that the parties were under no illusion as to the nature of the property that was sought to be hypothecated. The parties intended that OCR would, after subdivision and transfer of the property into OCR's name, register a first mortgage bond for R2 million (balance of the purchase price) and an additional amount of R400 000 over Erf 39937, being a portion of Erf 4788 after its subdivision.

[31] It must be remembered that the property was registered into OCR's name on 30 January 2018 before the balance of R2 million of the purchase price was paid. In terms of the agreement the balance of the purchase price was payable on or before 30 June 2018 in respect of which OCR was required to furnish the appellant's conveyancers with an undertaking for its due payment by no later than 31 March 2018. The purpose of the mortgage bond was to secure the payment of the balance of the purchase price. The construction of the relevant clause of the agreement by the court a quo and its other findings, results in the appellant being permanently deprived of its security for its claim for the balance of a purchase price and leaves the appellant with no security, in the event of OCR being liquidated, as happened in this case.

[32] I now turn to consider OCR's assertion of fraudulent representation by the appellant. The court a quo purported to apply the *Plascon Evans* principle[5], which essentially entails that an application can only be granted if the facts set out by a respondent that postulate a defence can be rejected on the papers. Otherwise, it should fail. The court a quo stated that OCR's allegation concerning fraud on the part of the appellant cannot be said to be far- fetched and thus capable of rejection on the papers. Then, inexplicably, after acknowledging a dispute of fact the court a quo went on to hold positively that the defence of fraud had been established and that the balance of the purchase price 'is no more than R300 988-10'. This is the result of deducting the amount for the Bulk Contribution levy. But because of its findings in relation to the registrability of the bond, even in relation to the reduced amount, the court a quo held that the application should fail.

[33] The court a quo failed to take into account that on OCR's own version it knew before any of the two addendums were concluded that the local authority required payment of the contribution levy. By the time of the second addendum it was crystal clear that the payment was due and that it had not been paid. All that had been communicated, much earlier by the appellant, was that there had been an earlier verbal communication by the local authority, in respect of the prior development, that it would not be required. That oral undertaking was not sustained. There was now a new development proposed and the developer, OCR, was in terms of the agreement

[5] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

required to bear the costs, which would have included the bulk contribution levy. By the time the first addendum was concluded it was clear that it had not been paid and that payment was required. In this case the defence of fraud raised by OCR was clearly contrived and fell to be rejected on the papers.

[34] The immovable property to be mortgaged was, without more, clearly identifiable. The parties understood it to be so. The agreement between the parties clearly indicated an intention to mortgage the identified property. As between the parties the agreement was valid and enforceable.[6] In the present circumstances the regulations relied on by the court below have no application. The court a quo ought to have confirmed paras 2.1, 2.3 and 3 of the rule nisi. It follows therefore that its order should be set aside.

[35] Subsequent to the discharge of the rule nisi on 5 December 2018, two important developments occurred. First, on 5 February 2019 OCR sold Erf 39937 Paarl to a third party for R1 million. This was after an application for leave to appeal had been lodged by the appellant on 20 December 2018. The property was transferred and registered into the name of a purchaser on 17 April 2019. Second, after the appellant was granted leave to appeal to this Court on 30 May 2019, OCR was placed in voluntary liquidation by resolution dated 21 November 2019 and registered with the Companies and Intellectual Property Commission on 27 November 2019.

[36] The question therefore is whether it is still competent, in light of these developments, to grant the relief sought in paras 2.1, 2.3 and 3 of the notice of motion, more so, in view of the fact that the property in respect of which the relief is sought is no longer registered in the name of OCR. The appellant's purpose with this appeal was to preserve its security, namely, the mortgage bond, to which it was entitled at the time of the approach to the court a quo and to ensure its position in respect of the liquidation. Counsel for the appellant proposed that if we were minded to set aside the order by the court a quo, that it be replaced with a declarator valid as at the date of the judgment, to the effect that it was at that date, entitled to the orders sought. The

---

[6] G Wille, T J Scott and S Scott *Wille's Law of Mortgage and Pledge in South Africa* 3 ed (1987); 17 *Lawsa* 2 ed para 328 and 345.

liquidators have indicated that they would be willing to abide such an order in adjudicating the appellant's claims. I agree with that proposal, which will be reflected in the order that follows.

[37] In the result I make the following order:

1 The appeal succeeds with costs, including the costs of two counsel.

2 The order of the court a quo is set aside and is replaced by the following order:

'(a) It is declared that as at 5 December 2015 the appellant is entitled to the relief sought in paras 2.1, 2.3 and 3 of the notice of motion.

(b) The first respondent is ordered to pay the applicant's costs.'

_____

Zondi JA
Judge of Appeal

Appearances:

For appellant:	R S van Riet SC (with him A Newton)
Instructed by:	Lombard Kriek Attorneys, Tyger Valley
	Honey and Partners Inc, Bloemfontein
For respondents:	–